

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

JAVIER PENA-CALLEJA,)	
)	
Petitioner,)	
)	
v.)	No. 4:10CV1158 FRB
)	
GARY J. STOLZER,)	
)	
Respondent.)	

MEMORANDUM AND ORDER

This matter is before the Court on petitioner's petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. Petitioner seeks enforcement of an order of deportation by the United States Department of Justice. Because petitioner is not entitled to habeas relief, the Court will summarily dismiss the petition.

Petitioner was convicted of statutory rape and served a prison sentence in Missouri. Petitioner has submitted an exhibit demonstrating that he is subject to an order of removal made by an Immigration Judge in a federal Immigration Court in December 2009. Petitioner states that he is now a civil pretrial detainee awaiting trial on whether he is a sexually violent predator under Missouri's Sexually Violent Predator Act, Mo. Rev. Stat. §§ 632.480 - 632.513. Petitioner seeks immediate removal from the United States. Petitioner claims that the State of Missouri may not detain him for civil proceedings because he is subject to a federal order of removal.

Rule 4 of the Rules Governing § 2254 Cases states: “If it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court, the judge must dismiss the petition.” This Rule applies to § 2241 habeas petitions. See Rule 1(b) of the Rules Governing § 2254 Cases.

Title 28 U.S.C. § 2241(c) states: “The writ of habeas corpus shall not extend to a prisoner unless . . . [h]e is in custody in violation of the Constitution or laws or treaties of the United States.”

Petitioner does not have a constitutional right to be removed from the United States. Petitioner is not exempt from civil commitment proceedings in the State of Missouri simply because he is not a citizen of the United States. And petitioner does not have a legal right to enforce an order of an Immigration Judge in this Court. As a result, petitioner is not “in custody in violation of the Constitution or laws or treaties of the United States,” and he is not entitled to federal habeas relief.

Finally, petitioner has not made a substantial showing of the denial of a constitutional right, and the Court will not issue a certificate of appealability. 28 U.S.C. § 2253(c).

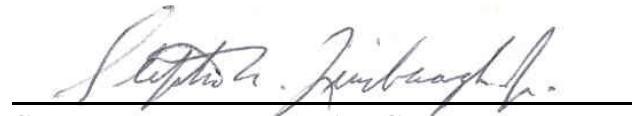
Accordingly,

IT IS HEREBY ORDERED that petitioner’s petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241 is **DISMISSED**.

IT IS FURTHER ORDERED that the Court will not issue a certificate of appealability.

An Order of Dismissal will be filed with this Memorandum and Order.

Dated this 25th day of August, 2010.



STEPHEN N. LIMBAUGH, JR.
UNITED STATES DISTRICT JUDGE